IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 394 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

NEW INDIA ASSURANCE CO LTD. - Appellant(s)
Versus
VIMLABEN RAJESHBHAI VALAND & 2 - Defendant(s)

==========

Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR MB MASARIA for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/08/2006

ORAL JUDGMENT

1. Heard the learned counsel for the appellant. This is an appeal under section 173 of the Motor Vehicles Act, 1988, at the instance of the insurer of the vehicle which is allegedly involved in the accident in question.

2. The appellant challenges herein the order passed by the Tribunal under section 140

of the said Act. Obviously, this award is in the nature of an interim award which is subject to adjustment against the final award which may be passed in the main claim petition viz. M.A.C.P. No.1263 of 2002, pending before the Motor Accident Claims Tribunal, Ahmedabad (Rural). This principle is established by the Supreme Court decision in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kotadia, reported at 2001(4) JT 477.

3. In the premises aforesaid, I see no reason to interfere at this stage of the matter and interests of justice would be met by passing the following order:

4. The amount deposited by the applicant shall be continued in the fixed deposit till the final disposal of the main claim petition. The periodical interest accruing on the said amount shall be paid to the original claimant. The original claimant shall, however, file an undertaking before the Tribunal within four weeks of the service of this order on the claimant to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be

dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

5. The Tribunal is directed to dispose of the main claim petition within a period of two years from the date of receipt of the writ of this Court.

6. Subject to the observations and directions hereinabove, the above appeal stands disposed of with no order as to costs.

7. The amount deposited in the appeal, if any, with the Registry is directed to be transmitted to the Tribunal forthwith i.e. not later than 31st August 2006.

8. The R & P to be re-transmitted to the Tribunal forthwith, i.e. latest by 31st August 2006.

9. Direct service is permitted.

(K.S. JHAVERI,

J.)

Suresh*